IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4380 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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THE SPECIAL LAND ACQUISTION OFFICER & 1 - Appellant(s)
Versus
SHANTILAL PRAGAJIBHAI - Defendant(s)

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Appearance :
MS REETA CHANDARANA, AGP for Appellant(s) : 1 - 2.
MR KM SHETH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 29/08/2007

ORAL JUDGMENT

The appeal is admitted and the same is taken up for final disposal.

1. The Special Land Acquisition Officer, Narmada Unit-12, Bharuch and Executive Engineer, Narmada

Yojna Naher Division No.2/3, Karjan, Dist. Baroda, appellants herein- original opponents, have filed this appeal under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908 against the judgment and award dated 16.4.2005 passed by the learned Civil Judge (S.D.), Bharuch in Land Acquisition Reference Case No.2830 of 1997. By the impugned judgment, learned Judge was pleased to partly allow the reference application and has held that all applicants are entitled to receive compensation of their acquired land at the rate of Rs.36.50 per sq.mtr. as an additional amount of compensation in Compensation Case No.100 of 1994 over and above the compensation of Rs.4.09 per sq.mtrs which was awarded by the Land Acquisition Officer. That means the learned Judge has awarded in all Rs.36.50 + Rs.4.09 = Rs.40.59 per sq.mtr. The learned Judge has also granted consequential relief in this behalf.

Basic Facts:-

2. The State Government has sent a proposal to acquire lands of village Sarbhan, Taluka Amod, District Bharuch for the purpose of construction of Sarbhan branch minor canal of Narmada Yojna which is for the public purpose. The total land which was sought to be acquired was 80 sq.mtrs. On perusal of the said proposal, the State Government was satisfied that the lands of village Sarbhan, Taluka Amod, District Bharuch were likely to be needed for the said purpose. In view of the same, the State Government issued a Notification under Section 4(1) of the Act, which provides Publication of preliminary notification and powers of officers thereon. The said notification was published in official Gazette on 7.12.1995. After the said notification, the notice was served on the owners of the land. The said owners have filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer submitted his report to the State Government under Section 5A(2) of the

Act, which provides hearing of objections. Considering the said report, the State Government was satisfied that the lands in question are needed for the purpose of construction of Sarbhan branch minor canal of Narmada Yojna. Thereafter, the State Government decided to issue notification under Section 6 of the Act which provides declaration that land is required for a public purpose. The said notification was published in the Official Gazette on 27.4.1996. After issuance of the said notification, notices were sent to the interested persons in this behalf.

3. After considering the material placed before him, the Special Land Acquisition Officer passed an award dated 31.01.1997 under Section 11 of the Act which provides Enquiry and award by Collector. The Special Land Acquisition Officer awarded compensation at the rate of Rs.4.09 per sq.mtrs. to the claimants.

4. As the claimants were of the opinion that the amount of offer of the compensation passed by the Special Land Acquisition Officer was meager and, therefore, they have filed an application requiring the Special Land Acquisition Officer to refer the matter to the Civil Court for determining the just amount of compensation payable to them under Section 18 of the Act which provides Reference to Court. It may be noted that the said section falls within Part III of the Act which also provides Reference to Court and procedure thereon.

5. When the matter reached before the learned Judge i.e. Land Reference Court, the Court registered the number as 2830 of 1997. Before the Reference Court, the claimants claimed compensation at the rate of Rs.50.00 per sq.mtrs.

6. Before the Reference Court, the claimants have filed following documentary evidence.

6.1 As the record of the documentary evidence

is concerned, the claimants have produced extract of 7/12 of the land in question and the extract of well is produced at Exh.15.

6.2 The claimant also produced the Village Form No.6 at Exh.25 average price list of the crops which is at Exh.22 and copy of the price of cotton at Exh.24.

7. Before the Reference Court, the claimants examined following witnesses;

1. Shantilal Pragjibhai who is happened to be the claimant of the land in question at Exh.17.

2. Mahendra Nanubhai Nanavati who is happened to be Assistant Secretary, A.P.M.C., Bharuch at Exh.21.

3. Govindbhai Ranchhodbhai who is happened to be Assistant Secretary

in the Sarbhan Co-operative Agricultural Produce and Processing Marketing Society at Exh.23.

8. The Reference Court noted that no evidence of comparable sale or other evidence of compensation of the market value was produced by the claimants and that enhanced compensation was claimed on yield basis.

9. Before the trial court, Shantilal Pragjibhai who has been examined at Exh.17, deposed that he has produced the evidence on behalf the other claimants as all claimants have agreed that the compensation awarded by the Special Land Acquisition Officer is inadequate. He has deposed before the Court that the land was having quality of black and fertile and having facility of irrigation. He was growing cotton and ladyfinger. To establish this aforesaid fact, the claimant has also produced extract of 7/12 of the said land. He further deposed that he was

getting crops by applying modern technique in first season he was getting crops of 28 quintals of cotton which he used to sell APMC, Bharuch and other private traders.

10. He also stated that he was receiving from the crops of cotton Rs.58,800/- per acre, after deducting 35% cultivation expenses, he was getting Rs.38,200/- net annual income. After taking crops of cotton, he was taking crops of ladyfinger in second season. 150 quintals of ladyfinger which he used to sell it to APMC, Bharuch and other private traders. He has stated that after deducting 35%, he was getting Rs.73,400/- per acre as net annual income from the crops of ladyfinger.

11. Shri Shantilal Pragjibhai further deposed that the acquired land was having irrigation facility. To prove the said facts, the claimant produced 7/12 extracts of the land at Exh.15 and Exh.25 which indicates that there was a well for

irrigation. He also deposed that their acquired land is away 3 to 5 km. from place of Amod Taluka to the land is having high potential, residential and industrial, surrounding there are industries of sugarcane, gin of cotton. The said land is used for both residential and industrial purposes, gin of cotton etc. He has also deposed that they were having amenities of transport like motor and truck, telephone, water, academic education, electricity, cooperative societies, railway track etc. The land was adjacent to State Highway. He has, therefore, deposed that he is entitled for Rs.50/- per sq.mtr. by way of compensation.

12. The claimant has also examined one Mahendrabhai Nanubhai Nanavati at Exh.21 who happened to be Assistant Secretary in APMC, Bharuch. The said witness produced price-list of APMC to show at what price, the crop is selling in the market. The witness has also deposed that the price list has been issued after verifying

the record of APMC, Bharuch.

12.1 The claimant has also examined Govindbhai Ranchhodbhai at Exh.23, who happened to be the Secretary of Sarbhan Co-op. Society.

12.2 On the other hand, the State as well as the opponent has not produced any oral evidence. They have produced a copy of extract of 7/12 of land at Exh.31 to 34 and also produced a copy of the award of the Land Acquisition Officer in LAR No.100/1994 at Exh.30 and produced copy of statement of 5 years sale instance at Exh.35.

13. The Reference Court considered that in this case, the claimant has claimed enhanced compensation on yield basis. On appreciation of documentary evidence adduced namely extract 7/12 of land produced by the claimant, the Reference Court has held that each claimant was able to raise crop of cotton as well as green tuver and ladyfinger in this behalf. After going through

the oral evidence as well as documentary evidence, learned Judge of the Reference Court has taken into consideration the rate of compensation Rs.36/- per sq.mtrs. of land as income. This Court is of the view that the said finding is based on the evidence both oral and documentary produced by the claimants. Therefore the said would be legal, just and proper. The learned Judge has taken into consideration the income from the crop of cotton comes to Rs.73/- per sq.mtrs. After deducting 50% gross income towards cultivation expenses against the income of Rs.58,800/- of cotton crops, the same is to come to Rs.29,400/- if divided the net income by 4000/- sq.mtrs, it will come to Rs.7.35/- per sq.mtrs. Thereafter, the learned Judge has come to the conclusion that after applying multiplier of 10, it will come to Rs.73/- per sq.mtrs. and, therefore, ultimately the Reference Court comes to conclusion that, the claimants would be entitled to Rs.36.50/- as just and proper. Thus, learned judge of the Reference

Court has partly allowed the Reference case by awarding additional compensation at the rate of Rs.36.50 per sq.mtrs to the claimants by a common judgment and award dated 16.4.2005 which has given rise to the above numbered appeal.

14. The learned A.G.P. for the appellant in this appeal contended that the award passed by the learned Judge, the learned Judge has awarded very excessive amount of compensation and, therefore, the judgment and award of the learned Judge is required to be quashed and set aside and the award passed by the Land Acquisition Officer should be confirmed and restored as the same was passed by the Special Land Acquisition Officer after considering several aspects.

15. On the other hand, learned advocate Mr.K.M. Sheth, appearing for the defendant, contended that the award of the Special Land Acquisition Officer can hardly be regarded as a relevant piece of evidence and as witnesses

examined by the acquiring body had not produced any sale deed for consideration of the Court. He further stated that the judgment and award of the learned Judge is based upon oral and documentary evidence. It is further stated that the claimant has adduced in this behalf particularly the crops of cotton, pigeon peas, ladyfinger, sugarcane grown on the land acquired as well as the price fetched by the sale of the same to APMC, Bharuch. He has further stated that the claim of the claimant that he was taking the aforesaid crops should be accepted by this Court also because the witnesses have deposed before the Court which is supported by the documentary evidence. He has also relied upon the evidence of the claimant which shows that they were growing 28 quintal of cotton on the acquired land and the rate indicated at Exh.22 should be accepted by this Court in view of the principle laid down by the Hon'ble Apex Court in the case of **State of Gujarat and others V/s. Rama Rana and others reported in 1997(2) SCC 693** in that matter the

Hon'ble Apex Court has held that the Court has a duty to consider the oral evidence to great scrutiny and evaluate the evidence objectively and dispassionately to reach a finding of fact on compensation award. Multiple of 10 should be applied and deduction of 50% towards cultivation expenses should be made.

16. This Court has heard both the learned advocates. This Court has also gone through the evidence on record and paper-book produced by learned advocate Mr.Sheth, appearing for the claimant in this behalf.

17. Learned A.G.P. Ms.Reeta Chandarana has relied upon the recent judgment of the Hon'ble Apex Court in case of **Land Acquisition Officer, A.P. V/s. Kamadana Ramakrishna Rao and others reported in (2007)3 SCC 526** and stated that agricultural income on yield basis, multiplier of 10 to be taken for that purpose. She has also relied upon paragraphs 15, 16 and 17 of the said

judgment in this behalf where, the Hon'ble Apex Court has considered the earlier decision in this behalf.

18. In this case, the claimant claimed compensation on the yield basis and after considering the evidence adduced by the claimants, Reference Court has awarded additional amount of compensation at the rate of Rs.36.50 per sq.mtrs. after applying multiplier of 10. I have gone through the evidence of Shantilal Pragjibhai at Exh.17 and further relevant documentary evidence produced by the other witnesses in this behalf. After going through the same, it is established that the claimant is entitled to Rs.36.50/- per sq.mtrs. from the crop of cotton instead of Rs.73/- per sq.mtrs.

19. After going through the judgment of the Hon'ble Apex Court in case of Rama Rana (Supra) as well as Kamadana Ramakrishna (Supra) and after going through the evidence on record, this

Court is of the view that the claimant is entitled for growing 16 quintals cotton per year per acre. The rate of cotton per quintal at the relevant time was Rs.2100/- at Exh.22 which is the price-list of A.P.M.C. Bharuch which has been produced by the claimant. From that, this Court is of the view that the claimant was able to realize income of Rs.33,600/- per year, 50% is deducted towards cost of cultivation it will come to Rs.16,800/- per year per acre from the sale of cotton.

20. This Court also relied upon the judgment of the Hon'ble Apex Court in case of **Land Acquisition Officer V/s. P. Veerabharappa reported in AIR 1984 SC 774** wherein, the Hon'ble Apex Court has held that 50% should be deducted towards the costs of cultivation. If 50% is deducted from 33,600/- the net income which would be come to Rs. 16,800/- per year per acre from the sale of cotton. An acre is equivalent to nearly 4000 sq.mtrs. Therefore, in order to

arrive at income from agriculture produce per sq.mtrs., the figure of Rs. 16,800/- will have to be divided by 4000 sq.mtrs. which will bring the price of the land acquired at Rs.4.20 per sq.mtrs.

21. In view of the judgment of the Hon'ble Apex Court in the case of State of Gujarat vs. Rama Rana and others (supra), LAO, A.P. vs. Kamadana Ramakrishna Rao and others (supra) and LAO vs. Veerabhadrappa (supra), for the purpose of valuation for agricultural income, the basis of the capitalization principle, proper multiplier to be applied. If multiplier of 10 is applied then income derived from sale of cotton would be Rs.42/- per sq.mtrs. The Reference Court in this case has awarded compensation payable to the claimants at the rate of 36.50/- per sq.mtrs. as additional compensation and the Special Land Acquisition Officer has awarded Rs.4.09/- per sq.mtrs. Thus, total amount awarded to the claimant is Rs.40.59/- per sq.mtrs. which cannot

be regarded as excessive at all. In fact the same is absolutely legal and valid.

22. Thus, after going through the oral and documentary evidence, this Court is of the view that the learned Judge of the Reference Court has given just award and price per square meter is just and correctly arrived at after applying the principle laid down by the Hon'ble Apex Court. Thus, First Appeal No.4380 of 2007 filed by the Government will have to be dismissed. In the result, the appeal fails and is dismissed. The impugned judgment and award of the learned trial Judge is confirmed. There shall be no order as to costs. The Registry is directed to draw decree in terms of this judgment.

(K.M.MEHTA, J.)

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